IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2506 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SOLANKI BHARATKUMAR KHUSHAL- BHAI

Versus

DISTRICT PRIMARY EDUCATION OFFICER

Appearance:

MR KB PUJARA for the Petitioner.

MR HS MUNSHAW for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 12/07/2001

ORAL JUDGEMENT

1. Rule. Mr.Munshaw and Mr.Joshi waive service of rule for the respective respondents.

With the consent of the parties, the matter is taken up for final hearing today.

2. The petitioner was selected as a primary teacher on 8.10.1992 in Ikbalgadh Ashram Shala. The State Government had passed a resolution dated 23rd August, 1973, consequent on the representation to Government that teachers appointed in Ashram Schools run by voluntary agencies have no security of service, as a result of which they leave the institutions as soon as they secure better employment, on account of which the work in Ashram Schools suffer. It was, therefore, decided by the said Resolution that such teachers employed in the Ashram Schools and who possess the prescribed qualifications and experience for appointment as primary teachers of the District Education Committees under the Panchayats and who are within the prescribed age limit on the day of their recruitment in the service of Ashram Schools were allowed to have their lien in the services of the respective District Education Committees under the Panchayats and the services of such teachers are counted in the services of the District Education Committees from the date of selection by the Staff Selection Committee of the respective District Panchayats. The said G.R. is at Annexure `A'. It is also provided in the said G.R. that those of the teachers who will be selected by the District Education Committee for absorption in their services will normally continue in the Ashram Schools and will not be allowed to join the schools of the District Education Committees unless either the Ashram Schools are closed or they have put in at least five years' services in the Ashram Schools. Therefore, as per the said G.R., even if a teacher is selected for appointment in the schools of the District Education Committees unless he completes five years' service in such Ashram Schools, where he was serving, he will not be able to join the services of the District Education Committees. In other words, he will have to complete five years' service in the Ashram Schools and after completing such five years' service, such teacher was found eligible to be appointed, provided he is selected by the District Education Committee for appointment in their schools, in which case the teacher will be entitled to have lien for the services which he had rendered in the Ashram Schools.

3. The respondent No.2 school also passed a Resolution, which is at Annexure `B', page 18, by which the said school decided to give benefit of lien to those who are serving in their Ashram Shalas. The respondent No.2-School also gave no objection by their letter dated 25.6.1998 in the matter of giving benefit of lien in case the petitioner is absorbed as a teacher under the District Education Committee. On the basis of the advertisement which was published in newspaper on 25th

June, 1998, which is annexed at page 22, the petitioner applied for appointment under the District Education Committee. It is required to be noted that so far as selection procedure is concerned, the said selection is purely on objective criterion, and on the basis of the marks obtained by the candidate in the S.S.C. and P.T.C., the merit list is prepared and there is no further scope of any written examination or even for oral examination except to verify the genuine mark-sheets from such candidates, who are placed on the merit list by virtue of the marks they obtained in the S.S.C. and P.T.C. examinations and also in order to find out whether they are physically fit or not. The basis for calling such candidates for personal interview is also mentioned under the Rules, known as "Recruitment / Selection Rules of Vidya Sahayaks". The aforesaid Rules are produced at page 69 by the petitioner with his affidavit-in-rejoinder, wherein it is clearly mentioned at page 71 that the reason for calling candidates for personal interview is only to find out whether he is physically fit or not and, therefore, as stated earlier, on the basis of the marks obtained in the examinations, merit list of those candidates, who are found eligible for appointment, is prepared, subject to further verification regarding their physique, etc., in the oral interview. On the basis of the marks obtained by the petitioner in his S.S.C. and P.T.C. examinations, his name was included in the merit list and the petitioner thereafter appeared in the personal interview also on 13.9.1998 and, therafter, he was expecting his appointment order. In the meanwhile, the petitioner has also sent all necessary papers of lien etc., to the Department. Thereafter, by an order dated 22nd January, 1999, which is at Annexure `D', the District Primary Education Officer has passed an order of granting lien to six teachers, which includes the name of the petitioner also at serial No.6. The aforesaid order, therefore, clearly shows that the petitioner was selected by the District Primary Education Officer and benefit of lien was also given to him by the aforesaid letter. The only thing which was required to be done further was giving him posting orders on the basis of his selection. Therafter, by an order dated 22.9.2000, the Director of Primary Education, Gujarat State, Gandhinagar informed the District Primary Education Officer that out of the six teachers, on whose behalf the proposal was sent, the lien can be given to two persons, one Rajput Bhurabhai Pirabhai, and the present petitioner. Accordingly, the Director had approved the proposal of the District Primary Education Officer for giving lien so far as the present petitioner as well as Rajput Bhurabhai Pirabhai

are concerned. On the basis of the said order, the petitioner was awaiting his posting order. However, it seems that for a considerable time, no posting order was given to him by the District Primary Education Officer. The petitioner also made some representations in this connection from time to time. In the meanwhile, fresh advertisement was published in the newspaper, which is produced at Annexure `G' page 39 in the compilation. The petitioner, therefore, again applied for such appointment on the basis of the said advertisement dated 8.8.2000 as he was apprehending that he may not be given the appointment order on the basis of his earlier selection. The petitioner was again selected and he was given appointment order dated 17th January, 2001 produced at page 44. It is required to be noted that so far as the said appointment is concerned, it is based on the application of the petitioner as a direct recruit and not as an employee of a particular Ashram Shala. The petitioner, however, subsequently informed the Department that he is accepting the appointment order without prejudice to his rights and contentions. However, as per the averments in the petition at page 7 of the petition, the petitioner has accepted the aforesaid appointment order dated 17th January, 2001 without prejudice to any of his rights, claims and contentions for such absorption in view of the lien granted to him on the basis of his service rendered in the Ashram School of respondent No.2. Accordingly, the petitioner has accepted the said appointment order dated 17.1.2001 and he has joined the service as Vidhya Sahayak.

4. The grievance of the petitioner, however, in this petition is that the District Primary Education Officer has not given the benefit regarding his services which he has put in as a Vidhya Sahayak in the Ashram School of respondent No.2. Since the said benefit was not given, he challenged the same by filing the present Special Civil Application.

5. The petitioner has prayed in the petition that he should be given the benefit of Lien on the same lines on which one Mr.Rajput Bhurabhai Pirabhai was granted the same and the said Mr.Rajput Bhurabhai Pirabhai was granted the benefit of lien with effect from 16.10.2000. For the said claim, the petitioner has placed strong reliance on the letter of the Director of Primary Education dated 22.9.2000, which is addressed to the District Primary Education Officer, wherein he has approved the benefit of lien in favour of the said Mr.Rajput Bhurabhai Pirabhai and the present petitioner. At the time of hearing of this Special Civil application,

it was argued by Mr.Pujara, learned Advocate for the petitioner, that as per the Resolution dated 23rd August, 1973, a teacher is entitled to the benefit of Lien from the date of selection by the Staff Selection Committee of the respective District Panchayats. It is not in dispute that so far as the Ashram School of respondent No.2 is concerned, staff of the said Ashram School are eligible for the benefit of lien as per the G.R. dated 23rd August, 1973. It is the say of the petitioner that he having been selected at the relevant time, he was entitled to the lien as per the said Circular. It is stated that without any valid reason, he was not given the appointment order and, therefore, ultimately, he applied again when new advertisement appeared in the newspaper. It is the say of the petitioner that the action of the District Education Committee in not giving absorption to the petitioner as per the G.R. dated 23rd August, 1973 is illegal, arbitrary and discriminatory and there was no reason to discriminate the case of the petitioner from Mr.Rajput Bhurabhai Pirabhai.

6. On behalf of the District Education Committee, affidavit-in-reply has been filed by one Mr.Gameti, who is a District Education Officer of the District Panchayat. It is stated in paragraph 6 of the said reply that pursuant to the preparation of the merit list, the petitioner, along with other meritorious candidates were called for interview with the original mark-sheets and certificates and therafter, a select list and waiting list were prepared. It is further stated that the petitioner was placed in the waiting list as he could not be placed in the select list, wherein candidates who have secured 71.58 points and above were placed. It is further stated that the said select list was operated and the appointments were made from the select list and the last candidate appointed had secured 71.58 points and that the waiting list was prepared to the extent of 20% of the posts advertised and, therefore, the petitioner was kept in the waiting list. In view of the aforesaid affidavit-in-reply, it was argued by Mr.Munshaw that since the petitioner was in the waiting list and since he was not given any substantive appointment order, the benefit of the aforesaid G.R. dated 23rd August, 1973 is not available to him. Mr.Munshaw further submitted that, subsequently, when the petitioner appeared in the fresh selection process and was ultimately selected, the aforesaid Scheme of the Resolution of 1973 was already scrapped and the Scheme of giving benefit of lien was not available and, therefore, according to him, the petitioner was not entitled to the said benefit. He further submitted that by Resolution dated 8.12.1999, the

Resolution of 23rd August, 1973 is scrapped. The said Resolution is at page 60, Annexure `IV'. In paragraph 3 of the said Resolution, it is clearly mentioned that whatever decisions taken prior to the date of this Resolution will not be affected. In that view of the matter, the only question which is required to be considered is whether the petitioner is entitled to the benefit of the 1973 Resolution or not. Reading the said Resolution, it is clear that if a teacher is selected by virtue of such selection by the Selection Committee, he is straightaway entitled to the benefit of lien as mentioned in the said Resolution. The relevant part of the Resolution is required to be repeated again :-

> " ... ...
>
> Those of the teachers who will be selected by the District Education Committees for absorption in their service will normally continue in the Ashram Schools and will not be allowed to join the schools of the District Education Committees unless either the Ashram Schools are closed or they have put in at least five year services in the Ashram Schools.
>
> ... ...

By virtue of the said Resolution, even if a teacher is selected for appointment by the District Education Committee, he will not be allowed to join the schools of the District Education Committee unless he has put in at least five years' service in the Ashram Schools. It is, therefore, clear that what is required to be seen is the selection of such teacher. The said G.R. nowhere provides that such benefit can be given on the basis of posting orders or actual appointments and it deals with only selection and nothing more. Mr.Munshaw, however, argued that since the petitioner was not appointed on the basis of his selection so far as the earlier selection process is concerned, he was not entitled to the lien. He also submitted that so far as Rajput Bhurabhai Pirabhai is concerned, he was not only selected, but was also given appointment order and, therefore, he was given the benefit of lien in view of the aforesaid G.R. of 1973. In my view, it is not possible to accept the say of Mr.Munshaw and it is difficult to distinguish the cases of these two persons, viz. the petitioner and Rajput Bhurabhai Pirabhai. It is not in dispute that the petitioner was selected and, may be, at the relevant time, he was kept in the waiting

list, but what is required to be seen is selection and not appointment. Therefore, even if a teacher is appointed by a Committee, and he is serving in the Ashram School, he may not be able to get the appointment in the School of the District Education Committee till he completes the five years' service, but still, he can be said to have been selected and such teacher is entitled to the benefit of the G.R. of 1973. Under these circumstances, there was no reason to deny the benefit of the G.R. of 1973 to the petitioner simply on the ground that even though he was selected, actual posting order was not given and, therefore, since he was not appointed, he was not entitled to the said benefit. Reading the G.R., no other view is possible and it is clear that on the basis of his selection, such teacher is entitled to get the benefit of lien. It is not in dispute that the petitioner was selected on the basis of his interview of 13th September, 1998, which was followed by order dated 22.1.1999 passed by the District Primary Education Officer and subsequent order of the Director of Primary Education dated 22.1.2000, by which the benefit of lien was given to the petitioner as well as to Rajput Bhurabhai Pirabhai. In view of what is stated above, the petitioner was entitled to have benefit of lien on the basis of his selection and the said benefit was not dependent upon the appointment order of the petitioner on the said post. The District Primary Education Officer has failed to consider the G.R. of 1973 in its proper perspective and on wrong interpretation, the petitioner was denied his just claim of lien. In fact, there was no reason to discriminate the petitioner and he was entitled to the same benefit and treatment which was given to Mr.Rajput Bhurabhai Pirabhai. It is not in dispute that the said Rajput Bhurabhai Pirabhai was already given the benefit of lien by the Department.

7. In view of what is stated above, it is not possible to accept the say of the learned Advocate for the District Primary Education Officer that unless actual appointment order is given, the benefit of lien cannot be given. The said argument is dehors the Resolution dated 23rd August, 1973. It is no doubt true that the petitioner himself subsequently appeared in the interview. However, the subsequent appointment was accepted by the petitioner without prejudice to any of his rights, claims and contentions to get the benefit of lien in view of his earlier selection. Mr.Munshaw has fairly stated that the petitioner was selected on the basis of the first advertisement. However, since he was kept in the waiting list, he was not given the benefit of the G.R. However, as stated above, in the said G.R. of

1973, nowhere it is stated that the benefit should be given only on appointment. In that view of the matter, in my view, without any justifiable reason and on wrong interpretation of the Resolution, the petitioner was denied the benefit at the relevant time.

8. In view of what is stated above, the petition is required to be allowed and it is accordingly allowed. It is clear that the petitioner is entitled to the benefit of lien on the basis of his selection and the District Primary Education Officer is directed to give the same benefit of lien as per the G.R. of 1973 as has been given to Mr.Rajput Bhurabhai Pirabhai. Necessary orders in this behalf may be passed within a period of two months from today.

The petition is accordingly allowed. Rule is made absolute.

It will be open for the petitioner to take direct service of this order in order to see that the Department expedites the proceedings.

(P.B. Majmudar, J.)

(apj)